

**ORDINANCE NO. 11-41**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN COMCAST OF SOUTH FLORIDA I, INC. TO ENTER INTO AN INSTALLATION AND SERVICES AGREEMENT WITH COMCAST OF SOUTH FLORIDA I, INC. TO CONSTRUCT, USE, MAINTAIN, OPERATE, ALTER, REPAIR, INSPECT AND REMOVE A BROADBAND COMMUNICATIONS SYSTEMS TO SERVICE RESIDENTS OF A 33-UNIT ELDERLY HOUSING PROJECT TO BE LOCATED AT 525 WEST 1 AVENUE, HIALEAH, FLORIDA, IN SUBSTANTIALLY THE FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", AND GRANTING AN EASEMENT FOR 5 YEARS IN CONNECTION THEREWITH; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Planning and Zoning Board at its meeting of June 22, 2011 recommended approval of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into an Installation and Services Agreement with Comcast Of South Florida I, Inc. to construct, use, maintain, operate, alter, repair, inspect and remove a broadband communications system to service residents of a 33-unit elderly housing project to be located at 525 West 1

Avenue, Hialeah, Florida, in substantially the form as attached hereto and made a part hereof as Exhibit "1", and hereby grants an easement for 5 years in connection therewith.

**Section 2: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 5: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the

Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

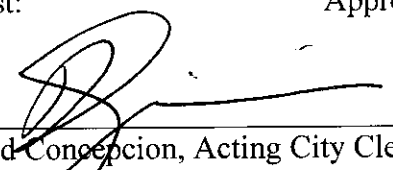
PASSED and ADOPTED this 12th day of July, 2011.

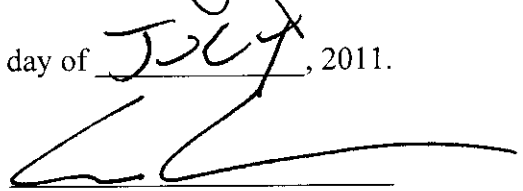
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
Isis Garcia-Martinez  
Council President

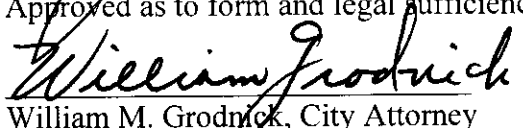
Attest:

Approved on this 13 day of July, 2011.

  
David Concepcion, Acting City Clerk

  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
William M. Grodnick, City Attorney

S:\WMG\LEGISLAT\ORD\Ordinance

2011\comcasteasementandinstallationaandservicesagreement33unitproject525west1avenue.docx

Ordinance was adopted by a 6-0 vote with  
Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente,  
Garcia-Martinez, Gonzalez and Yedra voting "Yes".  
Councilmember Hernandez absent.

## INSTALLATION AND SERVICES AGREEMENT

This Installation and Services Agreement (the "Agreement") is dated \_\_\_\_\_, 2011, and is between Comcast Of South Florida I, Inc. (the "Company"), and The City Of Hialeah (the "Owner"), who owns certain real estate and improvements thereon located at 525 W. 1<sup>st</sup>. Ave., Hialeah, Florida 33013 (the "Premises"), consisting of 33 residential units plus any units added or constructed in the future.

The Company has been granted a franchise by an authorized governmental agency (the "Franchise Authority") to construct and operate a cable communications system in Hialeah, Florida (the "City"). The Owner desires to provide broadband services to the Premises, including, but not limited to, multi-channel video, high speed data, information and voice services (collectively, the "Services") and the Company is willing to install, maintain and operate a broadband communications system for such purposes on the Premises in accordance with the terms and conditions below.

The parties, for good and valuable consideration, intending to be legally bound, agree as follows:

1. Company/Owner Wiring Construction and Installation.

a) The Company shall install, maintain and repair all facilities necessary to transmit the Services to the Premises, including, but not limited to, distribution cables, amplifiers, pedestals, lock boxes, equipment and appurtenant devices (collectively, the "Company Wiring") excluding cable home wiring, cable home run wiring, connectors, splitters, and wall plates. The Company Wiring is and will remain the personal property of the Company. All work shall be done by the Company in a proper and workmanlike manner in accordance with Federal Communications Commission ("FCC") regulations, industry standards and local codes, unless otherwise provided in this Agreement. The Company shall be responsible for all costs and expenses incurred by it in installing, maintaining and repairing the Company Wiring. The Company agrees to repair and/or replace any damage to the Premises resulting from the installation, operation, maintenance or removal of the Company Wiring, except as otherwise provided in this Agreement. The Company will be responsible for obtaining all necessary permits, licenses and approvals in connection with the construction, installation and operation of the Company Wiring.

b) Prior to the installation of the Company Wiring, the Owner shall provide plans to Company locating all underground facilities existing on the Premises. The Owner shall give the Company at least twenty (20) days notice of the opening of utility trenches on the Premises so that the Company may, at its option, install the Company Wiring in the common utility trenches, and shall otherwise cooperate with the Company in the construction and installation of the Company Wiring.

c) The Owner will install all cable home and cable home run wiring necessary for the Company to distribute the Services to the Premises (the "Owner Wiring") in accordance with the Company's specifications. In the event that the Company determines that the Owner Wiring has not been installed in accordance with the Company's specifications, the Company shall not be required to continue construction of the Company Wiring or to provide the Services until the Owner Wiring is made compatible with the Company Wiring.

1) The Owner will install any additional equipment necessary, such as neutral lockboxes and taps, to enable Company and other providers to use the Owner Wiring to provide broadband services at the Premises. The ownership of all parts of the Owner Wiring is and will remain the personal property of the Owner.

2) The Owner shall maintain the Owner Wiring. If the Owner fails to maintain Owner Wiring in accordance with the Company's technical specifications, the Company may, at its option (i) suspend delivery of the Services to the Premises until the required repairs are made or (ii) if repairs are not made within five (5) days after notice is provided by the Company, repair the Owner Wiring as necessary and charge the Owner for all materials and labor expended by the Company.

d) Neither the Owner nor anyone operating on its behalf shall tap into, use or otherwise interfere with the Company Wiring or any portion thereof for any purpose. The Company shall have the right to interconnect with and use any telephony wiring owned or controlled by the Owner inside the individual units that may become necessary or useful for the provision of the Services to the residents, whether or not such facilities are owned, installed, controlled or maintained by the Company.

2. Easement. The Owner has the authority to grant and does hereby grant an easement in favor of the Company to place its lines across the Premises and to operate the Company Wiring, and shall cause such easement to run with the Premises. The Owner hereby agrees to execute the form of easement attached hereto as Exhibit A.

3. Access. The Owner shall allow Company personnel to enter all common areas of the Premises for the purposes of auditing, selling or disconnecting service, and installing, maintaining, repairing, replacing or removing equipment and apparatus connected with the provision of the Services, and shall use reasonable efforts to assure the Company access to any parts of the Premises over which it does not have control for the same purposes. The Owner shall supply the names and unit numbers of residents at reasonable intervals. The Owner shall cooperate with the Company to prevent (i) the unauthorized possession of converters or channel selectors and (ii) the unauthorized reception of the Services.

4. Delivery of Services. The Owner has the authority to grant and does hereby grant to the

Company during the term hereof the right to construct, install, operate, maintain, repair and replace, as necessary, the Company Wiring, to interconnect with and use the Owner Wiring to deliver the Services to the Premises. Owner shall not enter into a bulk services agreement with another service provider to provide services similar to the Services during the term of this Agreement regardless of the method used to deliver such services to the Premises.

5. Fees and Charges for Services. The terms, conditions, charges and fees for the Services provided to residents at the Premises shall be contained in contracts between the Company and individual residents. The Owner assumes no liability or responsibility for service charges contracted for by residents. All billing and collections from residents will be accomplished by the Company.

6. Customer Service. The Company shall provide customer service in accordance with its franchise agreement with the Franchise Authority. The Company will maintain a local or toll-free telephone number which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week. Company representatives will be available to respond to customer telephone inquiries during normal business hours. The Company will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the control of the Company.

7. Private Reception Devices. Notwithstanding anything else in this Agreement to the contrary, the Company shall not interfere with the right of an individual resident to install or use his own private reception device.

8. Interference. If any device or facility belonging to a resident or the Owner does not comply with the technical specifications established by the FCC, including, but not limited to, signal leakage, which interferes with the Company's delivery of the Services, the Company reserves the right to discontinue the Service to the Premises or, at the Company's discretion, to the individual unit until such non-conformance is cured by the Owner or resident, as the case may be.

9. Term. This Agreement, when duly executed by both parties, shall constitute a binding agreement between the Owner and the Company and their respective successors and assigns for a term of five (5) years.

10. Insurance. The Company agrees to maintain public liability insurance and property damage liability insurance as required by the Company's franchise agreement with the Franchise Authority. Upon request, the Company will provide the Owner with a certificate evidencing such insurance.

11. Indemnification. The Company shall indemnify, defend and hold the Owner, its personnel, directors, agents and representatives harmless from or against any and all claims, damage or expense arising out of the actions or omissions of the Company, its personnel, directors, agents and representatives for the installation, operation, maintenance or removal of the Company

Wiring, the interconnection with and use of the Owner Wiring, the Services provided to residents at the Premises pursuant to this Agreement or a breach of this Agreement. The Owner shall indemnify, defend and hold harmless the Company, its personnel, directors, agents and representatives from and against any and all claims, damage or expense arising out of the actions or omissions of the Owner, its personnel, directors, agents and representatives for the installation of the Owner Wiring, the operation or maintenance of the Premises or a breach of this Agreement, subject to the limitations of Section 768.28, Florida Statutes.

12. LIMITATION OF LIABILITY. NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, LOSS OF PROFITS, LOSS OF CAPITAL, COST OF SUBSTITUTE PRODUCT(S), FACILITIES OR SERVICES, OR DOWN TIME COST, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Termination.

a) Default. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default and identifying the specific provision in this Agreement which gives rise to the default. The defaulting party shall have sixty (60) days to either (i) notify the non-defaulting party that no default occurred and provide reasonable proof thereof, (ii) cure the default, or (iii) if such default is incapable of cure within such sixty (60) day period, commence curing the default within such sixty (60) day period and diligently pursue such cure to completion. In the event the defaulting party fails to do so within such sixty (60) day period, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice without further liability of either party.

b) Permanent Loss of Authority. This Agreement shall terminate automatically without any further liability on the part of the Company in the event the Company lacks authority to continue to provide the Services to the Premises due to loss of governmental authorization. This clause, however, shall not apply to periods of transition, such as franchises subject to review, transfer or reapplication, or where termination is the subject of dispute.

14. Removal of Company Wiring.

a) Upon expiration or termination of this Agreement for any reason, the Company shall have a period of six (6) months during which it shall be entitled, but not required, to remove the Company Wiring. The Company shall promptly repair any damage to the Premises caused by such removal.

b) Notwithstanding anything to the contrary contained in this Agreement, the removal period referenced in section (a) shall be tolled for as long as the Company has the right under applicable law to continue to provide any or all of the Services to any or all of the units on the

Premises after the termination or expiration of this Agreement, in which case the Company shall have the right to continue to own and use the Company Wiring and the non-exclusive right to interconnect with and use the Owner Wiring to provide the Services. This Section shall survive the termination of this Agreement.

15. Dispute Resolution. All disputes under this Agreement shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association. The parties shall appoint a mutually agreeable arbitrator reasonably familiar with broadband communications systems and services. In the event the parties are unable to agree to a single arbitrator, the dispute shall be submitted to a panel of three (3) arbitrators, one of which shall be reasonably familiar with broadband systems and services. Each party shall appoint an arbitrator and the two arbitrators so appointed shall then select a third arbitrator. The arbitrators shall apply applicable federal laws and regulations and the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles. The decision of the arbitrators shall be binding and conclusive on all parties involved, and judgment upon their decision may be entered in a court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party all costs of the arbitration, including reasonable attorneys' fees.

16. Marketing Support. The Owner shall provide exclusive Marketing Support for the Company for the Services. The term "Marketing Support" shall include, but not be limited to, the Owner's presentation of the Company's marketing materials for the Services, including, but not limited to multi-channel video, high speed Internet and voice services to existing and prospective residents. Marketing materials may include, at the Company's discretion, brochures, channel lineups, door hangers, service descriptions, and information regarding prices and special offers. All marketing materials shall be provided by the Company.

17. Miscellaneous.

a) Force Majeure. The Company shall not be liable for failure to construct or to continue to operate the Company Wiring or to provide the Services during the term hereof due to acts of God, the failure of equipment or facilities not belonging to Company (including, but not limited to, utility service), denial of access to facilities or rights-of-way essential to serving the Premises, government order or regulation or any other circumstances beyond the reasonable control of the Company.

b) Assignability; Binding Effect. In the event the Owner sells, assigns, transfers or otherwise conveys the Premises to a third party, the Owner shall give the Company prior written notice of such change of ownership or control. The Owner shall cause any new owner or controlling party to expressly assume this Agreement and agree to be bound by its terms. The Company may assign this Agreement without the consent of the Owner to any entity controlled by or under common control with Company, to any entity acquiring all or substantially all of the Company's assets in the City or any surviving entity following a merger, acquisition or consolidation. The assignee shall agree in writing to be bound by all the terms and conditions



hereof.

c) Applicable Law. This Agreement shall be governed and construed in accordance with applicable federal laws and regulations and by the laws of the jurisdiction in which the Premises are located, without regard to its choice of law principles.

d) Invalidity. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired.

e) Recording. The Company may record this Agreement (or a memorandum summarizing the material terms) in the public records of the county in which the Premises are located.

f) Notices. All notices, demands, requests or other communications given under this Agreement shall be in writing and be given by personal delivery, United States Postal Service, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to Owner:

City of Hialeah  
900 E. 56 St.  
Hialeah, FL 33013  
Attn.: City Clerk

If to the Company:

Comcast of South Florida I, Inc.  
18601 NW 2<sup>nd</sup> Ave.  
Miami FL, 33169  
Attn.: Commercial Development

With a copy to:

Comcast Cable Communications, LLC  
One Comcast Center  
Philadelphia, PA 19103  
Attn.: General Counsel

g) Confidentiality Each party agrees to keep the terms and conditions of this Agreement in strict confidence and shall not divulge any specifics of the same to any third party except current and prospective lenders, purchasers, attorneys, accountants, financial advisors,

partners and/or others with a need to know for the Owner or the Company to reasonably conduct its business, except as required by applicable law.

h) Entire Agreement; Amendments. All recitals set forth above are hereby incorporated into the body of this Agreement. This Agreement, including all exhibits attached, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

i) Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

OWNER

WITNESS/ATTEST

City of Hialeah

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: David Concepcion  
Title: City Clerk Hialeah

COMPANY

| ATTEST:

Comcast of South Florida I, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Ronald Hummel  
Title: Regional VP of Commercial Development



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011  
by \_\_\_\_\_ (name), the \_\_\_\_\_ (title)  
of City Of Hialeah, on behalf of said entity. He/she is personally known to me or has presented  
\_\_\_\_\_ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
(Print Name) Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011  
by Ronald Hummel, of Comcast of South Florida I, Inc., on behalf of said entity. He is  
personally known to me and did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
(Print Name) Notary Public

My Commission expires: \_\_\_\_\_

EXHIBIT A

(see attached)

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## GRANT OF EASEMENT

This Grant of Easement (the "Easement") dated this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between Comcast of South Florida I, Inc., its successors and assigns, hereinafter referred to as "Grantee" and City of Hialeah, hereinafter referred to as "Grantor".

Grantor and Grantee are parties to an Installation and Services Agreement dated \_\_\_\_\_, 2011, pursuant to which Grantee provides certain broadband communications services to the Premises described below.

In consideration of One Dollar (\$1.00), Grantor(s), owner(s) of the Premises described below, hereby grant(s) to Grantee, its successors and assigns, an easement in gross and right-of-way to construct, use, maintain, operate, alter, add to, repair, replace, reconstruct, inspect and remove at any time and from time to time a broadband communications system (hereinafter referred to as the "Company Wiring") consisting of wires, underground conduits, cables, pedestals, vaults, and including but not limited to above ground enclosures, markers and concrete pads or other appurtenant fixtures and equipment necessary or useful for distributing broadband services and other like communications, in, on, over, under, across and along that certain real property (the "Premises") located in County of Miami-Dade, State of Florida described as follows:

### LEGAL DESCRIPTION:

(See Attached)

Grantor(s) agree(s) for itself and its heirs and assigns that the Company Wiring on the Premises shall be and remain the personal property of the Grantee and may not be altered, obstructed or removed without the express written consent of the Grantee. Upon notice to Grantor, the Grantee, and its contractors, agents and employees, shall have the right to trim or cut trees and/or roots which may endanger or interfere with said Company Wiring and shall have free access to said Company Wiring and every part thereof, at all times for the purpose of exercising the rights herein granted; provided, however, that in making any excavation on said Premises of the Grantor, the Grantee shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation, and shall replace the earth so removed by it and restore the area to as near the same condition as it was prior to such excavation as is practical. This Easement shall run with the land for so long as Grantee, its successors or assigns provides broadband service to the Premises.

|

IN WITNESS WHEREOF, the parties hereto have caused this Easement to be executed by their duly authorized representatives as of the date first written above.

GRANTOR

WITNESS/ATTEST:

City of Hialeah

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE

ATTEST:

Comcast of South Florida, I, Inc.

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011  
by \_\_\_\_\_ (name), the \_\_\_\_\_ (title)  
of City of Hialeah, on behalf of said entity. He/she is personally known to me or has presented  
\_\_\_\_\_ (type of identification) as identification and did/did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name) Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2011  
by Ronald Hummel, of Comcast of South Florida I, Inc., on behalf of said entity. He is  
personally known to me and did not take an oath.

Witness my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_  
(Print Name) Notary Public

My Commission expires: \_\_\_\_\_



## **LEGAL DESCRIPTION**

The West 75 feet of the South 135 feet of Tract 18, Block 18, Town of Hialeah, Revised Plat of Block 18, according to the Plat thereof, as recorded in Plat Book 33, Page 15, of the Public Records of Miami-Dade County, Florida.